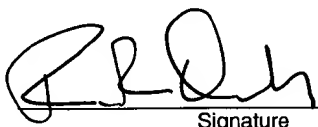


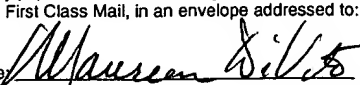


Doc Code: AP.PRE.REQ

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO/SB/33 (07-05)  
Approved for use through xx/xx/200x. OMB 0651-00xx  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		0081004.00167US2 (RSA-044)	
	Application Number	Filed	
	09/802278-Conf. #6866	March 8, 2001	
	First Named Inventor Ari JUELS		
Art Unit	Examiner		
3621	P. E. Elisca		
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number _____</p> <p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. <u>42,478</u></p> <p> Signature</p> <p><u>Ronald R. Demsher</u> Typed or printed name</p> <p><u>(617) 526-6000</u> Telephone number</p> <p><u>June 9, 2006</u> Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>			

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: MS AF, Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450.	
Dated: June 9, 2006	Signature:  (Maureen Divito)

The Examiner rejected claims 1-17 under 35 U.S.C. §103(a) as being unpatentable over Herz (U.S. 6,460,036) in view of Walker (U.S. 6,249,772).

In rejecting the claims, the Examiner characterizes Herz in combination with Walker as teaching distributing a negotiant function to a consumer for execution by the consumer. As support for this assertion, he points to column 39, lines 47-65 of Herz, and to the abstract and column 10, lines 35-45 of Walker. But a close reading of this text from Herz and Walker does not support the Examiner. Neither Herz nor Walker discloses distributing a negotiant function to a consumer for execution by the consumer, as required by independent claim 1:

(c) distributing the negotiant function to a consumer for execution by said consumer.

Similarly, for independent claim 7:

(a) distributing a negotiant function for execution to a plurality of consumers, the negotiant function designed to produce an information request as output;

### **The Herz Patent**

The section of Herz to which the Examiner directs our attention states the following:

When necessary in order to act on embedded message M1, server S4 may exchange or be caused to exchange further signed and optionally encrypted messages with proxy server S2, still over normal point to point connections, in order to negotiate the release of user-specific information and credentials from proxy server S2. (Herz, col. 39, lines 47-53, emphasis added)

This negotiation does not involve the user, i.e., the ultimate consumer in Herz, at all. It is simply an exchange that takes place between server S2 and server S4, neither of which is the consumer. Herz further states that after the negotiation between servers S2 and S4, the server S4 may send a response M2 to the user, via server S2, i.e.,

If proxy server S2 has sent a message to a server S4 and S4 has created a response M2 to message M1 to be sent to the user, then server S4 transmits the response M2 to the proxy server S2 using normal point-to-point connections. (Herz, col. 39, lines 61-65).

But sending the response M2 occurs after and as a result of the negotiation between servers S2 and S4. The negotiation therefore is not for execution by the user, as is required by the independent claims.

Further, the negotiation between servers S2 and S4 does not involve the distribution or execution of a negotiant function as required by claim 1. A negotiant function is a consumer-side executable function that receives information relating to the consumer, and produces a selection of outputs for use by the consumer based on the information. The specification provides a number of examples of a negotiant function. Herz does not disclose any distribution or execution of such a function.

In the Response submitted on October 7, 2005, and in an Examiner interview conducted on December 2, 2005, the Applicant pointed out that Herz fails to disclose distributing the negotiant function to a consumer, for execution by the consumer. To address this deficiency, the Examiner cites the Walker patent:

Based on the interview conducted on 12/02/2004, Applicant's representative argued that the prior art of record (Herz 036") fails to disclose distributing the negotiation function to a consumer for execution by said consumer. Whereas in Herz the negotiation has been done by two servers S2 and S4 but not by the consumer. However, the Examiner has made an updated search and found new prior art (Walker et al 772"). (Office Action mailed December 9, 2005; page 3).

### **The Walker Patent**

The Examiner characterizes Walker as teaching "a system/method wherein a consumer negotiates a price for a selected product, [so that] the consumer is assured that he will actually receive the product. (see., abstract, col 10, lines 35-45)." This teaching from Walker does not supply that which is missing from Herz. It does not address the "distributing" aspect, nor does it address the "for execution by the consumer" aspect.

Walker's system allows a user to identify and select, through a computer-based web browser, a product at a local retailer:

In system 100, when user computer 102 identifies a product online via an interactive web-browser, user computer 102 is then provided a price established by a manufacturer and transmitted from central controller 110. Thereafter, a user/customer can purchase and pick up the selected product from a retailer, selected from the list of retailers who have agreed to honor the price set by the manufacturer and transmitted to user computer 102, regardless of the retailer's normal price for such product. Accordingly, system 100 allows user computer 102 to log onto a central controller via network 106 and "lock-in" a price for an item which may be different from the shelf price posted at the local store from which the customer chooses to subsequently purchase that item. (Walker, col. 10, lines 10-23).

As the Examiner points out, Walker's system allows a user to establish a price for the product through the computer-based web browser, and reserve the selected product at the local retailer until he purchase the product:

In addition to the notion of selecting goods and products and establishing prices for the same online, system 100 allows for local store inventory checking and inventory reservations so that a customer knows and is assured that he may acquire a particular product for which he received a price online. Accordingly, after a consumer negotiates a price for a selected product, the consumer is assured that he will actually receive the product when he goes to a selected retailer to acquire that product. As such, system 100 can allow a hold or reservation to be made to reserve an inventory item at a local store. (Walker, col. 10, lines 35-45).

According to Walker, a user can "negotiate" a price for a product through a computer-based web browser by selecting a price set by a manufacturer. The user does so not select this price by executing a negotiant function that has been distributed to him, but rather selects the price by performing actions on his own. Therefore the Walker reference does not supply the limitation that is missing from Herz, i.e., distributing the negotiant function to a consumer for execution by the consumer.